

CONFERRING JURISDICTION ON THE COURT OF CLAIMS
IN CERTAIN CLAIMS.

MAY 24, 1898.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MAHON, from the Committee on War Claims, submitted the following

REPORT.

[To accompany H. R. 10371.]

The Committee on War Claims, to whom was referred the bill (H. R. 10371) conferring on the Court of Claims jurisdiction with respect to certain claims, submit the following report:

The facts out of which this bill for relief arises will be found stated in House Report No. 19, second session Fifty-fifth Congress, a copy of which is hereto appended and made a part of this report.

Your committee recommend that the bill referred to them do pass.

[House Report No. 19, Fifty-fifth Congress, second session.]

The claim was before the committee at the first session of the Fifty-fourth Congress, and was fully investigated and favorably reported.

Your committee adopt the report of this committee made during the first session of the Fifty-fourth Congress (a copy of which is hereto appended and made a part of this report), and recommend the passage of the bill.

House Report No. 42, Fifty-fourth Congress, first session.

Mr. MAHON, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 3210.]

The Committee on War Claims, to whom was referred the bill (H. R. 3210) to provide for the adjudication and payment of damages sustained by citizens of the United States in the border counties of York, Adams, Cumberland, Franklin, Fulton, Bedford, Somerset, and Perry, in State of Pennsylvania, from Union and Confederate troops during the late war of the rebellion, submit the following report:

The following is the history of the claim:

The damages resulted mainly from three hostile expeditions that were made into Pennsylvania during the late civil war. The losses occurred in the counties of Adams, Bedford, Cumberland, Franklin, Fulton, Perry, Somerset, and York, all lying along the southern border of Pennsylvania, excepting Cumberland and Perry, which adjoin Franklin and Adams on the north.

The first expedition was made in 1862 by General Stuart, principally in the two counties of Adams and Franklin. In 1863 occurred the great invasion of Pennsylvania by the army of General Lee, whose operations culminated in his defeat at Gettysburg and retreat across the Potomac. In 1864 occurred the cavalry raids by the army of General Early, who unexpectedly marched down the Shenandoah Valley.

On the 29th of July, 1864, the Confederate brigades of Johnson and McCausland, consisting of from 2,500 to 3,000 men, with six guns, crossed the Potomac and advanced upon Chambersburg, the county seat of Franklin County. The town was invested by the entire command of Johnson and McCausland, and a demand made upon the people for \$100,000 in gold or \$500,000 in Government funds as a ransom, a number of citizens being arrested and held as hostages for its payment. No offer of money was made by the people, and the town was burned by the Confederate forces.

The burning of Chambersburg occurred July 30, 1864, and resulted in a loss which was estimated by commissions appointed by two acts of assembly of Pennsylvania of 1868 and 1871.

The final adjudication, under the provisions of the act of 1871, of the claims for losses sustained in the burning of this town, was \$1,625,435.55. The total amount of the claims, including the losses by reason of the burning of Chambersburg, as they were investigated and finally liquidated under the provisions of the act of 1871, is \$3,450,565.45.

By far the larger portion of the claims presented by the State of Pennsylvania, and which this bill is intended to meet, was the result of

the raids of 1864, upon the sudden advance of General Early northward through the Shenandoah Valley.

The amount of damages inflicted by Stuart's raid in 1862, according to the findings of the commission appointed under the acts of assembly referred to, was \$123,067.60.

The following is a statement of the amount of losses suffered by each county from the several invasions above mentioned:

Adams County		\$485,900.71
Stuart's raid		3,538.28
		<hr/> 489,438.99
Franklin County	\$726,503.98	
Stuart's raid	119,529.32	
Burning of Chambersburg	1,625,435.55	
		<hr/> 2,471,468.85
Cumberland County		211,778.95
Fulton County		6,808.03
York County		53,944.08
Somerset County		214,366.15
Do		120.00
Perry County		2,640.40
		<hr/> 3,450,565.45

All of the above were adjudicated under an act of assembly passed in 1868, and subsequently the same claims were reexamined under the provisions of an act of assembly passed in 1871, somewhat reducing the amount of the findings under the earlier act of 1868.

The legislation of Pennsylvania upon the subject of these claims, the first legislative expression being before the close of the war, had always in view the liability of the General Government. This seems to have been the tenor of the language of the governor in his message in 1864 to the legislature assembled under a special call immediately after the burning of Chambersburg.

There was a repeated assertion on the part of the State of a claim for indemnity or reimbursement to its citizens for the extraordinary losses suffered in these several raids and invasions. The legislature, called in special session immediately after the burning of Chambersburg, made provision to the extent of the comparatively small sum of \$100,000, which was distributed pro rata among the most destitute sufferers from the destruction of Chambersburg. This seems to have been a pure charity.

The next act was that of February 15, 1866 (P. L., 43), appropriating to the citizens of Chambersburg, on account of losses by reason of the burning of their town by Confederate troops, the sum of \$500,000.

In that legislation the court of common pleas of the county in which the capital of the State is located was authorized to appoint three appraisers to make a just and true appraisal of the losses sustained by the people of Chambersburg and vicinity by reason of the burning of the town, and prescribed a method of procedure. The \$500,000 was to be divided pro rata and receipted for by the sufferers whose claims might be allowed, which receipts were to "state the amount paid and authorize the State to receive from the General Government said sums out of any money which may hereafter be appropriated by Congress to compensate them for losses sustained by the war." Thus was early asserted, in this act of 1866, by the reservation alluded to, the right to indemnity, and the payments by the State were made with the understanding expressed in the act that the State was not to be concluded by her action in this legislation, nor to be understood as relinquishing any right to insist upon these claims as against the United States or as assuming them herself.

In 1871 a further act was passed by the legislature of Pennsylvania appropriating \$300,000 to the citizens of Chambersburg and vicinity whose claims for war damages had been adjudicated under the act of February 15, 1866. This was the act of May 27, 1871 (P. L., 223, sec. 67). This amount was appropriated in the shape of loan certificates to be issued to citizens of Chambersburg whose claims had been adjudicated, as already stated, to the amount of \$300,000 pro rata to said claimants, \$18,000 to pay interest on the certificates for the current year, the certificates to be redeemable in five years or sooner, at the option of the State, and upon the issue of said certificates to the claimants, respectively, the State to become the holder of said claims. The governor, by said act, was further authorized to demand the payment of the amounts theretofore paid, and thereby appropriated to said claimants, from the General Government, and to appoint agents for the purpose, etc. It was further provided that out of any moneys appropriated by the United States said certificates of loan shall be first redeemed, and any additional amount repaid to the State on account of advancement of said claims shall be appropriated pro rata by the State treasurer, to the claimants in the border counties for war damages, adjudicated under the several acts of assembly, except those adjudicated under the act of February 15, 1866.

The acts of assembly that were from time to time passed to investigate and perpetuate the evidence of these claims, and providing against fraud or speculation therein, are of a character that must commend themselves to the judgment of fair-minded men.

These claims have been adjusted and readjusted under conditions and methods of procedure which would seem to exclude all possibility of misrepresentation or imposition.

They were adjudicated for all the counties in which losses were incurred by the operations of the war, under the act of April 9, 1868 (P. L., 74), entitled "An act for the relief of the citizens of the counties of Adams, Franklin, Fulton, Bedford, York, Perry, and Cumberland, whose property was destroyed, damaged, or appropriated for the public service and in the common defense in the war to suppress the rebellion," which act provided for the appointment of commissioners to investigate and adjudicate the claims of the citizens of the said counties, and upon their adjudication to report and file the same with the auditor-general, and imposing the duty upon the proper officers of the Commonwealth, to be designated by the governor, to proceed to recover compensation for said losses from the General Government, and, when so collected, the amount recovered to be paid pro rata to the sufferers in accordance with the report of the commissioners thus appointed. Provision was therein made for the ascertainment and appraisalment by the commissioners of the losses sustained, and an elaborate mode of procedure and method of verification and proof prescribed.

The matter was again brought before the legislature and the act of May 22, 1871 (P. L., 272), was passed. This was entitled "An act to authorize a liquidation of damages sustained by citizens of Pennsylvania during the late rebellion," and provided that the claims of the citizens of the counties of Adams, Bedford, Cumberland, Franklin, Perry, and York for extraordinary losses sustained during the rebellion, as adjudicated under the prior acts, naming them, be subjected to a careful revision by two commissioners in each of the counties named, to be appointed by the president judges of the courts of common pleas of said several counties. There was this further provision:

And the governor shall appoint competent counsel to represent the Government in the revision of said claims before the several commissioners, and said commissioners

shall reexamine and readjudicate all of said claims and may reject or diminish any now on file as equity may require, but not increase the amount of any excepting the claim of the German Reformed Church (which was one claim which it was provided shall be equitably adjusted); and any claims which may have been assigned or transferred by the original claimant, the assignee or present owner of the same shall be required to make satisfactory proof of the amount actually paid for the claim, and the amount so paid shall be awarded and no more; and if any owner of an assigned claim shall fail to make such proof satisfactorily the claim shall be rejected, and as said commissioners readjudicate said claim they shall indorse their approval thereon for the amount allowed and return the claims to the auditor-general.

This latter officer corresponds to the officer known as the comptroller or comptroller-general in some of the States.

These claims, as finally adjudicated under the last act, are on file in the auditor-general's office, excepting those which have been retained at Washington in order that they might not lose any right to have them allowed under the act of July 4, 1864.

Section 2 of the act provides:

The State shall issue to each claimant or to his, her, or their representative, a certificate or certificates to the amount allowed on each claim, in the following form.

This is the form of the certificate:

This is to certify that ——— has on file in the office of the auditor-general a duly approved and registered claim for the sum of ——— dollars, as adjudicated under the act entitled "An act to authorize the liquidation of damages sustained by citizens of Pennsylvania during the late rebellion," and payable only when said claims shall be paid by the United States Government.

These commissioners have reported and filed their reports and their findings, with proofs, in the auditor-general's office. The certificates have been nearly or quite all delivered to the holders.

Attention is called to the reservation contained in this certificate. These certificates, signed by the governor and State treasurer and countersigned by the auditor-general, are the evidence in the hands of the holders, and contain the implied pledge of the State to secure the payment from the General Government of the claims so ascertained, whereby they may and do invoke the agency of the State to secure the final payment of the claims so ascertained and evidenced.

This last adjudication includes the losses that were sustained by reason of the burning of Chambersburg.

The following section of the act of 1871 sets forth the undertaking of the Commonwealth to secure, so far as it may, the enforcement of what has always been believed to be the obligation of the Federal Government:

SEC. 3. It shall be the duty of the governor of the State to demand the payment of said claims by the General Government, and also the payment of the amount heretofore paid by the State on said claims, and to appoint such agents for the purpose as may be deemed necessary, and any appropriation made by Congress to said claims shall be wholly applied to the certificates authorized by the second section of this act, as Congress may direct, until the same shall be paid in full: *Provided*, That this act shall not be construed to make the State in anywise responsible for or on account of said certificates.

These claims have been solemnly adjudicated, and there has been excluded any possible mistake, imposition, or fraud that might otherwise have been practiced upon either the State or the National Government. They were deliberately and carefully passed upon in an orderly proceeding in which the adverse interest was represented. In a great majority of cases these claims were presented by the claimants themselves without the intervention of counsel. The commissions were composed of men of high character in each of the counties named in the

act, and, as already stated, the public interests were represented in a way that was in all respects analogous to that in which the General Government appears before the Court of Claims. The claims were thoroughly examined, the proofs and findings filed, and the whole is a matter of record in the office of the auditor-general of Pennsylvania. There has been special care exercised in these different proceedings to secure nothing against the General Government but what was justly due.

Shortly after the war of secession broke out, Governor Curtin, under the authority of the State of Pennsylvania, organized this body spoken of as the Pennsylvania Reserves. This was done under an act of assembly entitled "An act to create a loan to provide for arming the State," approved 1861, which provided for the loan of \$3,000,000 "to defray the expenses of organizing, arming, equipping, transferring, and supporting the military forces of this State now or hereafter to be called into the service in aid of the government of this State or of the United States."

It was provided by this act that the commander in chief, who was the governor, in connection with the officers composing the grand staff of the militia, were authorized to organize a military corps, to be called the Reserve Volunteer Corps of the Commonwealth, to be composed of 13 regiments of infantry, 1 regiment of cavalry, and 1 regiment of light artillery; these regiments to be organized, armed, equipped, clothed, disciplined, governed, and officered as similar troops in the service of the United States, and to be enlisted in the service of the State for a period not exceeding three years, or for the war, unless discharged, and were liable to be called into the service of the State at such times as the commander in chief might deem their services necessary for the purpose of suppressing insurrections or to repel invasions, with the further provisions that they were liable to be mustered into the service of the United States, as of course they were upon a requisition by the General Government, whether so expressed in the act or not.

Further provisions were contained in the said act for the establishment of camps of instruction, and for the pay and rations of the said corps under the State authority.

Under that act the Pennsylvania Reserves were organized; they were put into camps of instruction, and they constituted a standing army reasonably sufficient for the defense of the State against such raids and invasions of the enemy as then seemed likely to occur.

These troops, shortly after the disaster at Bull Run, in 1861, were suddenly called into the service of the United States Government, at a critical period, and were, until the close of the war, retained as part of the forces of the National Government operating in the field.

This corps, as provided in the act, was composed of 13 regiments of infantry, 1 regiment of cavalry, and 1 regiment of light artillery. They were fully armed, equipped, and organized, as provided by the act. They were among the best soldiers raised by the State, and, at the time they were suddenly called into the service of the Government, were in a high state of discipline and efficiency. Their splendid history justified the expectations had as to their ability to defend the State against anticipated invasion.

Both in 1862 and 1863, upon the occasions of the invasions that took place in those years, the militia of the State were called out by the governor. They were, of course, practically useless in the face of disciplined and veteran armies, and were inadequate to the protection of the State.

In 1862 the militia were called out because of the fears entertained of an invasion into the State by Lee, which, however, was thwarted by his repulse at Antietam. There were no forces in the State at the time of Stuart's raid, which took place in October, 1862, and the southern counties were entirely at the mercy of Stuart's troops.

There are certain special circumstances connected with the raid of 1864 and the burning of Chambersburg, which was its principal result, which it is proper to state.

On July 21, 1864, Governor Curtin, of Pennsylvania, and Governor Bradford, of Maryland, addressed a joint letter to the President, calling attention to the repeated raids across the Potomac River made by portions of the Confederate army, and proposing to enlist from their respective States a volunteer force sufficient, with the aid of such fortifications as might be speedily constructed, to guard the fords and protect the two States from these raids, and further asked that the recruits so raised be credited on the quotas of said States on the call last made, and that they be armed, equipped, and supplied as other volunteers in the service.

Attention is also called to the precedent in the early part of the war, by which the importance of a special defense was recognized by the Government, and the governor of Maryland authorized to raise three regiments with a view to the protection of that portion of his State. These regiments were subsequently called into the service of the Government, and so stated in the communication. The latter earnestly urged upon the President the importance of acceding to the suggestion made, and stated the purpose to immediately raise the forces required.

This letter was not answered until a day or two after the burning of Chambersburg, and then by a brief refusal to grant the authority asked.

At the time of the raid of McCausland and Johnson there were some 7 regiments in the service of the State of Pennsylvania. These had been raised for border protection. They were sufficient to have coped with the invading force, which consisted of 2,500 to 3,000 men. A diversion having been made toward Washington by a portion of the Confederate troops, these regiments were called for the protection of the capital. Three days after these troops were called to the Federal capital the town of Chambersburg was destroyed.

It might be mentioned that the region traversed by the invading forces was one of the richest and most inviting portions of the State, and the trend of the valleys leading to the State were such as to afford easy access and open avenues for retreat. The conditions were such as to suggest the likelihood of invasion and the importance of defensive measures.

It was pressed upon the attention of the committee that the State during the war had contributed to the armies of the Union, exclusive of militia and recruits for the Navy, under the several calls made upon her, a total of 362,284 men, being more than one-third of a million.

REASONS WHY THE GOVERNMENT SHOULD PAY THESE CLAIMS.

First. Prior to the adoption of the Constitution there existed thirteen independent sovereign States, of which Pennsylvania was one.

Second. A Federal Government was created under the provisions of the Constitution, having jurisdiction over these States to the extent, and only to the extent, named in the Constitution; but the authority of the States remained; they continued to be independent of the Federal Government in all respects except as to the powers granted to the latter.

Third. One of the objects of the Constitution was to "insure domestic tranquillity."

Fourth. The ratification of the Constitution was required of each State before the State became a part of this Federal Government. This ratification was by the State as an independent government. (See authorities cited in Paschal's *Anno. Const.*, note 243.)

Fifth. The right of a State to have a militia was recognized; but by Article II, section 8, clause 15, power was given to Congress to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. And by section 2 of same article the President is made commander in chief of the militia of the several States when called into actual service; but the right is reserved to the States to appoint the officers of and to train the militia, according to the discipline prescribed by Congress.

Sixth. In consideration of the grant by the States to the Federal Government of the powers enumerated in the Constitution, it was stipulated in section 4, Article IV, that "the United States shall protect each of them (the States) against invasion."

Seventh. The guaranty to protect each State against invasion was one of supreme importance to the States, and especially in view of the fact that the State had conceded to this new nation, into which it entered, the power to control its militia in all respects, except the officering and training. And when the Federal Government fails to protect a State against invasion, and by reason thereof injuries have been sustained, a very different question is presented from such as we have above mentioned, to wit, in claims made by private citizens for injuries by the Federal forces in actual conflict, or injuries inflicted by the enemy on such individual citizens.

The present claim now under consideration is presented by the State of Pennsylvania, one of the States that entered into and became a part of this new nation and party to this covenant for protection against invasion upon the terms already mentioned. It is, therefore, a claim that does not, as we submit, fall within the rule so often quoted.

Eighth. The constitution does not provide what shall follow as the result of a failure to "protect against invasion," and now, as we think, for the first time Congress is brought to the consideration of that question.

The obligation existed to protect, and there must be, in the highest political sense, if not in a sense justiciable in the court, a consequent and resulting liability, or obligation, upon failure to so protect. Whatever is necessary or proper to compensate for that failure is the discharge of an obligation, and not the dispensation of a bounty.

Each State before the Constitution had the power to create and control its own army for the defense of its territory, its property, its citizens, and their property; but this military power was surrendered to the Federal Government upon the guaranty of the latter that it would do what might have been done by the State but for the entering into this new relation; and it would, therefore, seem to conclusively follow that if there was loss of property by reason of failure to keep this guaranty compensation should be made for that loss.

The next question is, Was there an "invasion" in the sense of the Constitution?

This is answered by the Supreme Court of the United States in the case of *Pacific Railroad v. The United States* (120 U. S. R., 227), in these words:

It has been held by this court in repeated instances that, though the late war was not between independent nations, yet, as it was between the people of different

sections of the country, and the insurgents were so thoroughly organized and formidable as to necessitate their recognition as belligerents, the usual incidents of a war between independent nations ensued. The rules of war as recognized by the public law of civilized nations became applicable to the contending forces. Their adoption was seen in the exchange of prisoners, the release of officers on parole, the recognition of flags of truce, and other arrangements designed to mitigate the rigors of warfare. The inhabitants of the Confederate States on the one hand, and of the States which adhered to the Union on the other, became enemies and subject to be treated as such, without regard to their individual opinions or dispositions, while during its continuance commercial intercourse between them was forbidden, contracts between them were suspended, and the courts of each were closed to the citizens of the other. (*Brown v. Hiatts*, 15 Wall., 177, 184.)

In the light of this it can not be doubted that the entering upon the soil of the State of Pennsylvania by the Confederate forces for hostile purposes was an "invasion" against which the United States had guaranteed that State protection.

The duties to keep this guaranty and to make compensation for failure is emphasized by the facts of this case already recited, and of which the following is a brief summary:

The State of Pennsylvania responded to every call of the Government for the common defense. Her quota of troops was never unfilled. There was no duty she did not perform in common with her sister nonseceding States for the maintenance of the authority of the Federal Government. But she was situated on the border, and in addition to responding as above stated, and notwithstanding that she had the right to expect that the Government would prevent the enemy from entering upon her territory, she organized in addition militia of her own to repel any attempted invasion. She took every precaution against such a calamity. These forces were organized, drilled, armed, and equipped at the expense of the State, and stationed to protect against the very invasion and injuries for which she now presents this claim.

But there was imminent danger to the entire country of incalculably greater loss. The capital of the nation was threatened. Its vast property interests at the seat of Government, its Treasury, its archives, its very existence as a Government—all were in the greatest peril, and in this crisis, under the Constitution, the President called this force, organized to protect the State, to the higher duty of protecting the nation. The call was responded to by the withdrawal of said reserved militia raised by the State, and that withdrawal left the State defenseless and this injury followed.

It is impossible to make a stronger case than this for asking compensation under this guaranteed protection.

If this does not make a case, then this guaranty might better have never been written. It is only a delusion and a snare if no obligation follows a failure, because no one can read the Articles of Confederation and the history of the times without being impressed that this Constitution whereby the control of the militia was surrendered, and the power to protect against invasion yielded to the Federal Government, never would have been agreed to if it had been supposed that the guaranty to protect imposed no obligation.

Your committee recommend the passage of the bill with the following amendments:

On page 6, section 10, lines 1 and 2, strike out "or the tribe of Indians."

On page 4, at the end of section 5, add the following: "But the provisions of this bill shall not apply to any claim which was not duly presented under the above-mentioned acts."

